



March 1, 2000

Mr. Gary W. Smith
Legal Advisor
Baytown Police Department
3200 North Main Street
Baytown, Texas 77521

OR2000-0788

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 133465.

The Baytown Police Department (the "department") received a written request for a particular offense report involving a domestic disturbance. You state that portions of the offense report were released to the requestor. You contend that the remaining portions of the report are excepted from required public disclosure pursuant to sections 552.101, 552.108, and 552.130 of the Government Code.

You first contend that the individuals' social security numbers contained in the offence report are made confidential by federal law. This office concluded in Open Records Decision No. 622 at 3 (1994) that amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(vii)(I), make confidential any social security number obtained or maintained by any "authorized person" pursuant to any provision of law, enacted on or after October 1, 1990, and that any such social security number is therefore excepted from required public disclosure by section 552.101 of the Government Code, which excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

It is not apparent to us that the social security numbers contained in the records at issue were obtained or are maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. Although you have cited two provisions of the Internal Revenue Code, both of those provisions appear to be inapplicable in this instance. Further, we are not aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain a social security number. Therefore, we have no basis for concluding that the social security numbers at issue were obtained or are maintained pursuant to such a statute and are therefore confidential under section 552.101 of the Government Code in

conjunction with 405(c)(2)(C)(vii)(I). See also *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 180, 185 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (social security number of arrestee contained in "police blotter" specifically held to be public information). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, the department should ensure that these numbers were not obtained nor are maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." You explain that the information at issue pertains to the investigation and prosecution of a domestic violence case that was pending as of the date of your present request. Assuming the prosecution of that case is still pending, we conclude that you have met your burden of demonstrating the applicability of section 552.108(a)(1). Given that assumption, the department may withhold the information you have highlighted in orange at this time pursuant to section 552.108(a)(1).

Finally, section 552.130(a)(1) of the Government Code requires that the department withhold "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state." Accordingly, the department must withhold all driver's license numbers appearing in the offense report.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

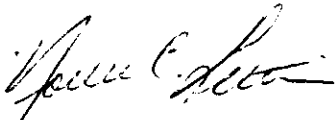
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Noelle C. Letteri
Assistant Attorney General
Open Records Division

NCL/RWP/nc

Ref.: ID# 133465

cc: Mr. David Rhodes
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(w/o enclosures)